IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 720 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHAGWANPURI KALUPURI GOSWAMI

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the detention order dated 19.6.2002, by which he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social

Activities Act, 1985 ("PASA", for short). Along with the detention roder, the petitioner is also served with the grounds of detention of the same date.

In the said grounds, there is a reference about two criminal cases which are filed against the petitioner under the provisions of the Bombay Prohibition Act. Considering the pendency of the two criminal cases under the Bombay Prohibition Act as well as considering the statements of two witnesses, the petitioner is detained as a 'bootlegger'. The said order dated 19.6.2002 is challenged by the petitioner in this petition.

At the time of hearing of this petition, the learned Advocate for the petitioner submitted that part of the document at page 35 is not legible. So far as the said document is concerned, it is a bail application of the petitioner, below which some order is passed by the Magistrate. However, the order passed is not legible and the said fact, as such, is not in dispute. Similarly also, part of the document at page 58 is also not legible, by which the petitioner was enlarged on bail by the Magistrate. In this connection, learned Advocate for the petitioner has placed reliance upon the Division Bench decision of this Court in Pokhrajbhai Sohanbhai Chandel v. District Magistrate, Surat & Ors., 1991(2) GLR 753, wherein this Court has held as under :-

> " ... ... ...
>
> On perusing the documents, it appears that the document at page 195 is the receipt issued by "Gujarat Rajya Nagrik Purvatha Nigam Ltd.", which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the payer on which the rubber stamp is applied, and the contents of the said rubber stamp are not legible. Learned Addl. P.P. appearing on behalf of the detaining authority was shown the document at page 195 and he fairly admitted that the said document is not legible. In view of this position, the detaining authority failed to supply legible copy of the said relevant document to the detenu for making an effective representation which has infringed the detenu's right under Art.22(5) of the Constitution.

... ... ...."

Since the two documents supplied to the petitioner are not legible, and considering the judgment of the Division Bench, in my view, the order of detention is required to be set aside, as the petitioner is denied his right to make effective representation. At least, the authority is expected to give all legible copies to the detenu so that he can make effective representation. In that view of the matter, the order of detention is required to be quashed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

21st March, 2003 ( P.B. Majmudar, J. )

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(apj)